

## ARTICLE I. ENCROACHMENTS

### Sec. 22-1. Definitions.

The following definitions shall apply to this article:

*Encroachment* includes going over, upon, under or using any public right-of-way or public watercourse in such a manner as to prevent, obstruct or interfere with its normal use, including the performance thereon of any of the following acts:

- (1) Depositing or leaving any rubbish, brush, earth, building material or other material of any nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to be littered, unsightly or obstructed.
- (2) Excavating, filling or disturbing the public right-of-way or public watercourse.
- (3) Displaying or storing merchandise or other property.
- (4) Block the traveled way or impede traffic.
- (5) Block or cover traffic-control devices duly installed by the city.
- (6) Erecting or maintaining any structure such as a flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, mailbox, pipe, conduit, wire, vault or other structure on, over or under a public right-of-way or public watercourse.
- (7) *Reserved.*
- (8) Planting or allowing to extend, any tree, shrub, grass or other growing thing within a public right-of-way or public watercourse.
- (9) Constructing, placing or maintaining on, over, under or within the public right-of-way any pathway, sidewalk, driveway, curb, gutter, paving, or other surface or subsurface drainage structure or facility.
- (10) Constructing, placing, planting or maintaining any structure, embankment, excavation, tree, or other object adjacent to a

public right-of-way or public watercourse which causes or will cause an encroachment.

*Engineer* shall mean the city engineer or his designated representative.

*Permittee* is any person, firm or corporation that proposes to do work or encroach upon a public right-of-way or public watercourse as herein defined and has been issued a permit for such encroachment in accordance with this article. "Permittee" is also the heirs and assigns and successors in interest of a permittee per section 22-11. For existing encroachments, as defined in section 22-13, or for encroachments not requiring a permit per section 22-3, "permittee" shall mean the current property owner adjacent to the encroachment.

*Public right-of-way* includes land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes.

*Public utility* shall mean any person holding a franchise from the city or under the jurisdiction of the public utilities commission and special districts functioning to provide public utility services.

*Public watercourse* is a channel for the carrying of stormwater, including both natural and artificial public watercourses.

*Standard street improvements* shall mean improvements to the public right-of-way or public watercourse in accordance with the Belmont Standard Specifications and intended for acceptance by the city for maintenance. Typical standard street improvements include sidewalk, curb, gutter, paving, street lighting, sanitary sewers and storm drainage facilities.  
(Ord. No. 811, § 1, 5-9-89)

### Sec. 22-2. Encroachments—Prohibited.

It shall be unlawful and no permits shall be issued for any person to:

- (1) Deposit or leave any rubbish, brush, earth, building material or other material of any

nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to become littered, unsightly or obstructed. See section 22-5(8) for temporary storage of construction material in a public right-of-way.

- (2) Display or store any merchandise or other property on a public right-of-way or public watercourse at any time. This section does not apply to items noted in section 22-3 as exempt from a permit or in section 22-5 for which a permit has been issued.
  - (3) Constructing, placing or maintaining posts, poles, columns or structures for the support of advertising signs or for the purpose of carrying lights intended primarily for lighting abutting property, excepting political signs installed in accordance with section 23.7.3a of the Zoning Ordinance. Walkway lights intended for lighting the encroached area and abutting property without producing undue glare are permitted encroachments.
  - (4) Block the traveled way or impede traffic.
  - (5) Block or cover traffic-control devices duly installed by the city.
- (Ord. No. 811, § 1, 5-9-89)

#### **Sec. 22-3. Same—No permit required.**

No permit shall be required to:

- (1) Install and maintain a lawn, hedge, shrubs or other landscaping within a public right-of-way, so long as they are maintained out of the traveled way for vehicles and pedestrians, they do not block established off-street parking spaces, and do not create a sight distance or safety problem.
- (2) Install and maintain a mailbox for a single-family home.
- (3) Install or maintain improvements by city employees or by a contractor working under contract for the city.
- (4) Perform maintenance or repair of any pipe or conduit lawfully on or under any public right-of-way or from making excavation,

as may be necessary for the preservation of life or property when an urgent necessity therefor arises, except that the person making an emergency use or encroachment shall apply for permit the next business day.

(Ord. No. 811, § 1, 5-9-89)

#### **Sec. 22-4. Same—Permit required.**

No person shall encroach or cause to be made any encroachment of any nature whatsoever within, upon, over or under the limits of any public right-of-way or watercourse without first obtaining a permit as required by this article.

If work is undertaken without a permit, the city may issue a stop work order. Pursuant to the stop work order, the person involved in the unpermitted work shall be prohibited from engaging in any further work until the appropriate encroachment permit is obtained.

Fees for encroachment permits obtained subsequent to a stop work order shall include a penalty fee as established by resolution of the city council. (Ord. No. 811, § 1, 5-9-89; Ord. No. 961, § 1, 5-22-01)

#### **Sec. 22-5. Authority to issue permits for minor and routine encroachments; city engineer.**

The city engineer may issue written permits, in accordance with this article, authorizing the permittee to do any of the following acts:

- (1) Excavating, filling or disturbing, per chapter 9 of this Code, the public right-of-way or public watercourse.
- (2) Constructing, placing or maintaining any structure within any public right-of-way below ground, such as any pipe, conduit, wire, utility vault or similar structure.
- (3) Constructing, placing or maintaining any structure within any public right-of-way or public watercourse roughly flush with the ground such as any pathway, driveway or other standard street improvement.

- (4) Constructing, placing or maintaining any structure above ground within any public right-of-way or public watercourse installed by a public utility, including but not lim-